Decision No. R25-0076

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24M-0451TR

IN THE MATTER OF THE PETITION OF DANNY GENE GOODALL FOR A QUALIFICATION DETERMINATION PURSUANT TO RULE 6114(k) OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE, 4 CCR 723-6.

RECOMMENDED DECISION
GRANTING MOTION FOR SUMMARY JUDGMENT AND
VACATING FEBRUARY 6, 2025 HEARING

Issued Date: February 3, 2025

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I. STATEMENT, SUMMARY, AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision grants the Motion for Summary Judgment ("Motion" or "Motion for Summary Judgment") filed January 8, 2025 by Colorado Public Utilities Commission Staff

("Staff"); disqualifies Petitioner Dany Gene Goodall ("Petitioner") from driving per § 40-10.1-110, C.R.S.; denies the Petition in this Proceeding; and vacates the February 6, 2025 remote evidentiary hearing.

B. Procedural History[1]

2. On October 18, 2024, Petitioner filed a Petition seeking a qualification determination ("Petition"). The Petition is styled as seeking a waiver or variance of § 40-10.1-110, C.R.S., and Rule 6114 of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* ("CCR") 723-6.[2]

3. On November 22, 2024, the Public Utilities Commission ("Commission") referred this matter to an administrative law judge ("ALJ") for disposition by minute entry.

4. In addition to Petitioner, Staff is a party to this Proceeding.[3]

5. On December 16, 2024, the ALJ scheduled a fully remote evidentiary hearing on the Petition; construed the Petition as seeking a qualification determination under Rule 6114(k), 4 CCR 723-6 and ordered that the caption be amended accordingly; and established procedures to facilitate the evidentiary hearing.[4]

6. On January 8, 2025, Staff filed its Motion for Summary Judgment. With its Motion, Staff filed a Confidential Attachment 1 and Public Attachment 1, comprised of an Affidavit of Alison Torvik (with Staff), two letters to Petitioner from Staff; the results of Petitioner's criminal

[1] Only the procedural history necessary to understand this Decision is included.
[2] Petition.
[3] Decision No. R24-0918-I at 4-5 (issued December 16, 2024).
[4] *Id.*

history check from December 2023 and July 2024; and the Judgment, Sentence and Order Partially Suspending Sentence in New Mexico District Court Case No. CR-87-076-4.[5]

7. Petitioner did not respond to the Motion for Summary Judgment.

8. On January 30, 2025, Staff filed a Motion to Vacate and Reschedule Hearing and Waive or Shorten Response Time ("Motion to Vacate") seeking to vacate and reschedule the February 6, 2025 evidentiary hearing in this matter.

II. FINDINGS AND CONCLUSIONS

A. Factual Findings

9. The following material facts are undisputed.[6]

10. Sometime in or around December 2023, Petitioner submitted his fingerprints to Staff for a fingerprint-based criminal history background check ("criminal history check") to drive for a motor carrier pursuant to § 40-10.1-110, C.R.S.[7] Staff received the results of Petitioner's criminal history check from the Colorado Bureau of Investigation ("CBI") on or about December 12, 2023.[8]

11. According to the results of the criminal history check, on May 8, 1987, Petitioner was convicted in New Mexico of attempted criminal sexual penetration of a minor child under 13

[5] Confidential Attachment 1 and Public Attachment 1 to Motion for Summary Judgment ("Confidential Attachment 1" or "Public Attachment 1") at 2-5 (Ms. Torvik's Affidavit); 6 (December 20, 2023 letter to Petitioner from Staff); 7-14 (December 2023 criminal history results); 15 (July 19, 2024 letter to Petitioner from Staff); 16-23 (July 2024 criminal history results); and 24-26 (New Mexico District Court's Judgment and Sentence). This Decision's references, citations and discussions of the Confidential Attachment do not reveal any information in the Confidential Attachment that is claimed to be confidential (*e.g.*, date of birth and social security numbers).

[6] As explained later, because Petitioner did not respond to the Motion for Summary Judgment, the ALJ deems the Motion confessed as permitted by Rule 1400(d) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1. This includes the factual assertions in those pleadings. As a result, the facts asserted in the Motion for Summary Judgment and Attachments thereto are undisputed facts.

[7] Motion for Summary Judgment at 1-2. *See* Confidential Attachment 1 at 2. The CBI's criminal history check generally include records from the Federal Bureau of Investigation. Confidential Attachment at 8-14; 17-26. *See* Motion for Summary Judgment at 2. As a result, the CBI's criminal history checks include criminal history from other states.

[8] Motion for Summary Judgment at 1-2. *See* Confidential Attachment 1 at 2.

years of age.[9] Based on this conviction, Staff determined that Petitioner is disqualified to drive for a limited regulation passenger carrier and/or taxi carrier per § 40-10.1-110, C.R.S., and Rule 6114.[10] Staff notified Petitioner of this determination via a letter dated December 20, 2023 to Petitioner.[11] With this letter, Staff provided a copy of Petitioner's criminal history results and explained the process to seek reversal of this determination.[12]

12. In July 2024, Petitioner again submitted fingerprints to Staff for a criminal history check to drive for a motor carrier pursuant to § 40-10.1-110, C.R.S.[13] Staff received the results of this criminal history check from the CBI on July 10, 2024.[14]

13. Petitioner's second criminal history check revealed the same conviction mentioned above.[15] Records from the New Mexico District Court that sentenced Petitioner provide more detail on that conviction.[16] Specifically, those records establish that on May 8, 1987, Petitioner was convicted in New Mexico of attempted criminal sexual penetration of a minor child under 13 years of age, contrary to §§ 30-9-11 and 30-28-1, New Mexico Statutes Annotated ("N.M.S.A."), (1978).[17]

14. Based on this conviction, Staff again determined that Petitioner is disqualified to drive for a limited regulation passenger carrier and/or taxi carrier per § 40-10.1-110, C.R.S., and Rule 6114.[18] Via a letter dated July 19, 2024 to Petitioner, Staff notified Petitioner of this

[9] Confidential Attachment 1 at 10-11.
[10] *Id.* at 3.
[11] *Id.* at 3 and 6.
[12] *See id.* at 3 and 6.
[13] *Id.* at 3.
[14] *Id.*
[15] *Id.* at 10-11, 19-20.
[16] *See id.* at 24-26.
[17] *Id.* at 24-26.
[18] *Id.* at 3.

determination.[19] With this letter, Staff provided a copy of Petitioner's criminal history results and explained the process to seek reversal of this determination.[20]

15. On October 18, 2024, Petitioner filed a "Petition for Waiver/Variance of Motor Carrier Rules" asking that the Commission waive § 40-10.1-110, C.R.S., and Commission Rule 6114.[21] As grounds, the Petition states, "[t]here was never any penetration. I gave my daughter a bath. She was [. . .] and was chapped."[22]

B. Relevant Law

16. The Commission may consider motions for summary judgment filed consistent with Rule 56 of the Colorado Rules of Civil Procedure ("C.R.C.P").[23] Summary judgment is appropriate when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law.[24] In deciding whether there is a genuine issue of material fact, the Commission may consider the pleadings, depositions, answers to interrogatories, admissions on file, and any affidavits.[25] In the context of summary judgment, a material fact is one that will affect the case's outcome.[26]

17. The moving party bears the initial burden to establish the lack of any genuine dispute as to any material fact, but once this burden is met, the burden shifts to the nonmoving party to demonstrate that a triable issue of fact exists.[27] This is demonstrated through relevant and

[19] *Id.* at 3-3, 15.
[20] *See id* at 3-4, 15.
[21] *See* Petition. As noted, the ALJ construed the Petition as seeking a qualification determination under Rule 6114(k), 4 CCR 723-6. Decision No. R24-0918-I at 4.
[22] Petition. The language omitted from the above quote is indecipherable.
[23] Rule 1400(f) 4 CCR 723-1. References in the Commission's Rules of Practice and Procedure to the C.R.C.P. are to those Rules "as published in the 2012 edition of the Colorado Revised Statutes." Rule 1004(h), 4 CCR 723-1. As such, this Decision's references and citations to the C.R.C.P. are to the 2012 version of those Rules.
[24] C.R.C.P. 56(c).
[25] *See* C.R.C.P. 56(c).
[26] *City of Aurora v. ACJ Partnership,* 209 P.3d 1076, 1082 (Colo. 2009).
[27] *Id.*

specific facts, supported by evidence, showing that a real controversy exists.[28] In determining whether summary judgment should be granted, all doubts must be resolved against the moving party.[29]

18. Generally, the proponent of an order bears the burden of proof by a preponderance of the evidence.[30] A party has met this burden of proof when the evidence, on the whole and however slightly, tips in favor of that party.[31] Although the preponderance standard applies, the evidence must be substantial. Substantial evidence is such relevant evidence as a reasonable person's mind might accept as adequate to support a conclusion; it must be enough evidence to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.[32]

19. Similarly, individuals disqualified to drive for a regulated motor carrier under Rule 6114(f)(III) who seek a qualification determination carry the burden to prove that the initial "disqualification is not supported by fact or law."[33]

20. Parties have 14 days to respond to motions, including motions for summary judgment.[34] When a party fails to file a response to a motion, the Commission may deem the motion confessed.[35]

[28] *Id*. Conclusory statements on ultimate issues without specific facts do not establish that genuine issues of material fact exist. *Olson v. State Farm Mut. Auto Ins. Co.,* 174 P.3d 849, 858 (Colo. App. 2007).
[29] *Jones v. Dressel,* 623 P.2d 370, 373 (Colo. 1981).
[30] §§ 13-25-127(1) and 24-4-205(7), C.R.S.; Rule 1500, 4 CCR 723-1.
[31] *Schocke v. Dep't of Revenue,* 719 P.2d 361, 363 (Colo. App. 1986).
[32] *City of Boulder v. Public Utilities Comm'n*, 996 P.2d 1270, 1278 (Colo. 2000).
[33] Rule 6114(k)(II)(B), 4 CCR 723-6.
[34] Rule 1400(b), 4 CCR 723-1.
[35] Rule 1400(d), 4 CCR 723-1.

21. Under § 40-10.1-110(1)(a), C.R.S., an individual who wishes to drive for certain Commission-regulated motor carriers[36] must have the individual's fingerprints taken for purposes of a fingerprint-based criminal history check.[37]

22. Under § 40-10.1-110(3)(b)(I), C.R.S., if the results of that criminal history check indicate that the individual has been convicted of a felony or a misdemeanor involving "moral turpitude," the individual is disqualified and prohibited from driving for certain Commission-regulated motor carriers. Moral turpitude is statutorily defined as including "any unlawful sexual offense against a child, as defined in § 18-3-411, C.R.S., or a comparable offense in any other state or in the United States."[38] The same statute includes other grounds to disqualify a driver based on their criminal history check, including a Commission determination that the person "is not of good moral character."[39] Thus, the plain language of § 40-10.1-110(3), C.R.S., contemplates different meanings for the terms "moral character" and "moral turpitude."

23. Commission Rules implement the above statutes. As relevant here, Rule 6114(f)(III)(A) provides that without a determination as to moral character, a driver is disqualified and prohibited from driving if the driver has been "convicted in the state of Colorado at any time of a felony or misdemeanor unlawful sexual offense against a child, as defined in § 18-3-411, C.R.S., or of a comparable offense in any other state or in the United States at any time."[40]

[36] Those are motor carriers who provide the following types of Commission-regulated transportation service: taxicab service under part 2 article 10.1, title 40, Colorado Revised Statutes; charter bus service; children's activity bus service; luxury limousine service; off-road scenic charter service; and large-market taxicab service under part 7, article 10.1, title 40, Colorado Revised Statutes. § 40-10.1-110(1)(a), C.R.S. References in this Decision to motor carriers identified in § 40-10.1-110, C.R.S., are to these carriers.

[37] § 40-10.1-110(1)(a) and (c), C.R.S.

[38] § 40-10.1-110(3)(b)(II), C.R.S.

[39] § 40-10.1-110(3)(a), C.R.S.

[40] Rule 6114(f)(III)(A), 4 CCR 723-6.

24. Reading § 40-10.1-110(3)(b), C.R.S., and Rule 6114(f)(III)(A) together, when a person's criminal history check indicates that the person was convicted at any time of a felony or misdemeanor unlawful sexual offense against a child as defined in § 18-3-411, C.R.S., or a comparable offense in another state, the person has been convicted of an offense involving moral turpitude as contemplated by § 40-10.1-110(3)(b), C.R.S., and is disqualified from driving without the Commission making a determination as to moral character.[41]

25. Individuals who have been initially disqualified by Commission staff may challenge that determination by making a request for the Commission to make a qualification determination; such requests must be made within 60 days of Commission staff's notification of its qualification determination.[42]

26. Under § 18-3-411(1), C.R.S., an unlawful sexual offense against a child includes "sexual assault, as described in section 18-3-402, when the victim at the time of the commission of the act is a child less than fifteen years of age." The same statute defines "unlawful sexual offense against a child" to include "criminal attempt, conspiracy, or solicitation to commit" of a listed unlawful sexual offense against a child, including sexual assault.[43] Because the definition of an unlawful sexual offense against a child under § 18-3-411(1), C.R.S., includes attempted sexual assault of a child under § 18-3-402, C.R.S., by its plain language, §§ 18-3-411 and 40-10.1-

[41] *See* § 40-10.1-110(3)(b), C.R.S., and Rule 6114(f)(III)(A), 4 CCR 723-6. Notably, under Rule 6114(k)(II)(D), the Commission applies § 24-5-101(2), C.R.S., to a qualification determination when considering a criminal history check for purposes of determining whether an individual is disqualified based on their moral character. This Rule language effectuates the Commission's interpretation of § 40-10.1-110(4), C.R.S., as to when § 24-5-101(2), C.R.S., applies to qualification determinations. Rule 6114(k)(II)(D) does not interpret § 40-10.1-110(4), C.R.S., to require the Commission to apply § 24-5-101(2), C.R.S., when considering a criminal history check to determine whether the person has been convicted of a crime involving moral turpitude, as is the case here. Rule 6114(k)(II)(D), 4 CCR 723-6. *See* Rule 6114(f)(III), 4 CCR 723-6. *See also* § 40-10.1-110(4), C.R.S. As such, this Decision does not outline or address requirements (if any) relating to § 24-5-101(2), C.R.S., as inapplicable.

[42] *See* Rule 6114(k)(I), 4 CCR 723-6.

[43] § 18-3-411(1), C.R.S.

110(3)(b)(II), C.R.S., contemplate disqualifying a person from driving based on a conviction for an attempted unlawful sexual offense against a child or a comparable offense in any other state.

27. A person commits sexual assault under § 18-3-402(1)(d), C.R.S., when the person "knowingly inflicts sexual intrusion or sexual penetration on a victim" who is less than 15 years old, is not the perpetrator's spouse, and the perpetrator is at least four years older than victim.[44] Sexual penetration as referenced in § 18-3-402, C.R.S., is defined as "sexual intercourse, cunnilingus, fellatio, anilingus, or anal intercourse. Emission need not be proved as an element of any sexual penetration. Any penetration, however slight, is sufficient to complete the crime."[45]

28. Generally, sexual assault under § 18-3-402(1)(d), C.R.S., is a class four felony.[46]

29. Under § 18-2-101(1), C.R.S., a person commits criminal attempt if:

> acting with the kind of culpability otherwise required for commission of an offense, he engages in conduct constituting a substantial step toward the commission of the offense. A substantial step is any conduct, whether act, omission, or possession, which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the offense. Factual or legal impossibility of committing the offense is not a defense if the offense could have been committed had the attendant circumstances been as the actor believed them to be, nor is it a defense that the crime attempted was actually perpetrated by the accused.[47]

30. In Colorado, attempt to commit a class four felony is a class five felony.[48] As such, in Colorado, generally, criminal attempt to commit sexual assault as defined by § 18-3-402(1)(d), C.R.S., is a class five felony.[49]

[44] § 18-3-402(1)(d), C.R.S. Section 18-3-402, C.R.S. includes other definitions of sexual assault that are not outlined above.
[45] § 18-3-401(6), C.R.S.
[46] § 18-3-402(2), C.R.S.
[47] § 18-2-101(1), C.R.S.
[48] § 18-2-101(4), C.R.S.
[49] *See* §§ 18-2-101(4); 18-3-402(2), C.R.S.

31. In May 1987, New Mexico defined criminal sexual penetration as "the unlawful and intentional causing of a person, other than one's spouse, to engage in sexual intercourse, cunnilingus, fellatio or anal intercourse, or the causing of penetration, to any extent and with any object, of the genital or anal openings of another, whether or not there is any emission."[50] Criminal sexual penetration under § 30-9-11, N.M.S.A., was a first degree felony if perpetrated on a child under 13 years of age.[51]

32. Under § 30-28-1, N.M.S.A., criminal attempt to commit a felony such as criminal sexual penetration required "an overt act in furtherance of and with the intent to commit a felony and tending but failing to effect its commission," and attempt to commit a first degree felony was a second degree felony.[52]

33. The primary goal in interpreting a statute is to give effect to the legislature's intent, and there is a presumption that the legislature intends a just and reasonable result which favors the public interest over the private interest.[53] Thus, a statutory interpretation that defeats the legislative intent or leads to an absurd result should not be followed.[54] To give effect to the legislature's intent, words and phrases should be given effect according to their plain and ordinary meaning.[55] In the absence of a statutory definition of a term, courts may determine an undefined term's plain and

[50] § 30-9-11, N.M.S.A., (1978). *See* Appendix A at 3. In this Decision, all citations, references and discussion of New Mexico statutes §§ 30-9-11, and 30-28-1, N.M.S.A., are to the version of those laws that existed in May 1987 (*i.e.*, the statutes as published in 1978). For ease of reference and to ensure a clear record, this Decision attaches copies of §§ 30-9-11, and 30-28-1, N.M.S.A., as they existed in May 1987 as Appendix A, which this Decision relies upon. The attached copy of § 30-9-11, N.M.S.A. is the 1978 publication of that statute (only available in print), and the attached copy of § 30-28-1, N.M.S.A., is from the 2023 publication of the N.M.S.A. This accurately reflects the statute as it existed in May 1987 because § 30-28-1, N.M.S.A., remained unchanged from its initial enactment in 1953 through 2023 (and was first amended in 2024). *See* Appendix A at 5.

[51] § 30-9-11, N.M.S.A. *See* Appendix A at 3.

[52] § 30-28-1, N.M.S.A. *See* Appendix A at 5.

[53] *Kerns v. Kerns,* 53 P.3d 1157, 1160 (Colo. 2002); *People v. Bowman,* 812 P.2d 725, 728 (Colo. App. 1991). *See* § 2-4-201(1)(c) and (e), C.R.S.

[54] *Conte v. Meyer,* 882 P.2d 962, 965 (Colo. 1994).

[55] *In re Marriage of Davisson,* 797 P.2d 809, 810 (Colo. App. 1990).

ordinary meaning by considering its dictionary definition.[56] A statute must be construed as a whole, and given consistent, harmonious, and sensible effect to all its parts.[57]

34. With these legal principles in mind, the ALJ turns to the substantive issues raised here.

C. Findings, Analysis, and Conclusions

35. Because Petitioner did not respond to the Motion for Summary Judgment, the ALJ deems the Motion for Summary Judgment confessed.[58] The ALJ finds that there are no material facts in dispute, that the only issues to be addressed involve questions of law, and that summary judgment is appropriate in the circumstances (as explained below).[59]

36. Staff established by a preponderance of the evidence that on May 8, 1987, Petitioner was convicted in New Mexico of attempted criminal sexual penetration of a minor child under 13 years of age, contrary to §§ 30-9-11 and 30-28-1, N.M.S.A.[60] Staff argues that this conviction is comparable to an unlawful sexual offense against a child as defined by § 18-3-411, C.R.S., (specifically, sexual assault per § 18-3-402, C.R.S.,) and that as a result, Petitioner is disqualified from driving for a Commission-regulated motor carrier under § 40-10.1-110, C.R.S., and Rule

[56] *People v. Harrison,* 465 P.3d 16, 20 (Colo. 2020); *Welch v. Colo. State. Plumbing Bd.,* 474 P.3d 236, 242 (Colo. App. 2020).

[57] *People v. Bowman,* 812 P.2d 725, 728 (Colo. App. 1991); *see* § 2-4-201(1)(b), C.R.S.

[58] *See* Rule 1400(d), 4 CCR 723-1.

[59] C.R.C.P. 56(c). The factual assertions in the Motion for Summary Judgment and Attachments thereto include the material facts at issue. Because the Motion is confessed, those factual assertions are not disputed. The material undisputed facts are outlined in ¶¶ 10-15 above. In determining that there are no material facts in dispute, the ALJ has considered all the pleadings, including the Motion for Summary Judgment and Attachments thereto and the Petition. *See* C.R.C.P. 56(c).

[60] Confidential Attachment 1 at 10-11, 19-20, 24-26. *See* Motion for Summary Judgment at 1-3; Confidential Attachment at 3-4.

6114(f)(III)(A), 4 CCR 723-6 because he has been convicted of an offense involving moral turpitude.[61]

37. Staff's argument turns on whether Petitioner's New Mexico conviction is a "comparable offense" as contemplated by § 40-10.1-110(3)(b)(II), C.R.S. The terms "comparable offense" are not defined in title 40, Colorado Revised Statutes, or in Commission rules. To determine the plain and ordinary meaning of these terms to effectuate the legislature's intent, the ALJ considers their dictionary definitions.[62] Merriam-Webster defines "comparable" as "capable of or suitable for comparison," or "similar, like"[63] and defines "offense" to include "an infraction of law" or "a breach of moral or social code."[64] Applying these dictionary meanings to "comparable offense" under § 40-10.1-110(3)(b)(II), C.R.S., requires that the relevant out-of-state conviction be for an infraction of law that is suitable for comparison to, or is similar to or like an unlawful sexual offense against a child, as defined in § 18-3-411, C.R.S., specifically, the offense of sexual assault under § 18-3-402, C.R.S. (one of the sexual offenses against a child listed in § 18-3-411, C.R.S.). This construction gives effect to the legislative intent for § 40-10.1-110(3), C.R.S.; is consistent with the presumption that the legislature intends a just and reasonable result which favors the public interest over the private interest; does not lead to an absurd result; applies the plain and ordinary meaning of "comparable offense;" and construes the statute as a whole, giving consistent, harmonious, and sensible effect to all its parts.[65]

[61] *See* Motion for Summary Judgment at 7. Staff also argues that the Petition is time-barred since it was filed more than 60 days after Staff's qualification determination. *Id.* at 6-7. The ALJ declines to decide the Petition on these grounds because it is in the parties' best interests and consistent with administrative economy to address the Petition on its merits given that Petitioner has twice asked for a qualification determination.

[62] *See People v. Harrison,* 465 P.3d at 20; *Welch,* 474 P.3d at 242.

[63] https://www.merriam-webster.com/dictionary/comparable (last visited February 3, 2025).

[64] https://www.merriam-webster.com/dictionary/offense (last visited February 3, 2025).

[65] *People v. Harrison,* 465 P.3d at 20; *Kerns v. Kerns,* 53 P.3d at 1160; *Conte v. Meyer,* 882 P.2d at 965; *Welch,* 474 P.3d at 242; *People v. Bowman,* 812 P.2d at 728; *In re Marriage of Davisson,* 797 P.2d at 810. *See* § 2-4-201, C.R.S.

38. For the reasons discussed, the ALJ finds that the relevant New Mexico and Colorado offenses are similar, and therefore, are comparable infractions of law. As relevant here, sexual assault under § 18-3-402(1)(d), C.R.S., and criminal sexual penetration under § 30-9-11, N.M.S.A., both require knowledge; sexual contact such as sexual penetration; and a victim who is not the perpetrator's spouse. [66] Notably, the relevant Colorado and New Mexico statutes define sexual penetration in a near identical manner to include sexual intercourse, cunnilingus, fellatio, or anal intercourse, to any extent or however slight, without the need for emission.[67] While criminal sexual penetration under § 30-9-11, N.M.S.A., can be committed against an adult, when the victim is a child under 13, the statute classifies the offense as criminal sexual penetration in the first degree (a first degree felony).[68] Similarly, § 18-3-402(1)(d), C.R.S., requires that the victim be less than 15 and the perpetrator at least four years older than the victim. Attempt to commit the offenses under New Mexico and Colorado both require an overt act or substantial step toward commission of the offense with the intent or culpability required for commission of the offense.[69] Similarly, conviction of attempted sexual assault under § 18-3-402(1)(d), C.R.S., and attempted criminal sexual penetration under §§ 30-9-11 and 30-28-1, N.M.S.A., are felonies.[70] All these similarities between the relevant statutes make them comparable offenses as contemplated by § 40-10.1-110(3)(b)(II), C.R.S.

[66] *Compare* §§ 18-3-402(1)(d) (defining sexual assault as contemplated by § 18-3-411, C.R.S.) and 18-3-401(6), C.R.S. (defining sexual penetration as contemplated by § 18-3-402, C.R.S.) with § 30-9-11, N.M.S.A. (defining unlawful sexual penetration). *See* Appendix A at 3.

[67] *Compare* § 18-3-401(6), C.R.S. (defining sexual penetration as contemplated by § 18-3-402, C.R.S.) with § 30-9-11, N.M.S.A. (defining unlawful sexual penetration). *See* Appendix A at 3.

[68] § 30-9-11(A)(1), N.M.S.A. *See* Appendix A at 3. This is significant given that Petitioner was specifically convicted of, "Attempted Criminal Sexual penetration of a Child Under Age (13), contrary to Section(s) 30-9-11 and 30-28-1 NMSA 1978 [. . .]" Confidential Attachment 1 at 24.

[69] *Compare* § 18-2-101(1), C.R.S., (defining criminal attempt) with § 30-28-1, N.M.S.A. (defining attempt to commit a felony). *See* Appendix A at 5.

[70] §§ 18-3-402(2), 18-2-101(4), C.R.S.; §§ 30-9-11 and 30-28-1, N.M.S.A. *See* Appendix A at 3-5.

39. Consistent with the above discussion, the ALJ finds that Staff met its burden to establish by a preponderance of the evidence that it is entitled to summary judgment as a matter of law.[71] In contrast, Petitioner failed to meet his burden to prove by a preponderance of the evidence that Staff's initial "disqualification is not supported by fact or law,"[72] or to establish that there are material facts in dispute.[73] Indeed, facts that Petitioner asserts in support of the Petition—that there was never penetration—are consistent with the evidence establishing his conviction of attempted criminal sexual penetration of a minor child under 13 years of age, contrary to §§ 30-9-11 and 30-28-1, N.M.S.A.[74]

40. For the reasons discussed, the ALJ finds that Petitioner's 1987 New Mexico conviction of attempted criminal sexual penetration of a minor child under 13 years of age, contrary to §§ 30-9-11 and 30-28-1, N.M.S.A., is a comparable offense to an unlawful sexual offense against a child under § 18-3-411, C.R.S., that is, attempted sexual assault as described in §§ 18-3-402(1)(d) and 18-2-101, C.R.S., when the victim is under 15 years of age. As a result, the ALJ concludes that Petitioner has been convicted of a felony involving moral turpitude as contemplated by § 40-10.1-110(3)(b), C.R.S., and is disqualified and prohibited from driving for Commission-regulated motor carriers identified in § 40-10.1-111(1), C.R.S., consistent with § 40-10.1-110(3)(b), C.R.S., and Rule 6114(f)(III)(A), 4 CCR 723-6.[75] For the same reasons, the ALJ concludes that Petitioner's disqualification is consistent with and serves the public interest. For all

[71] In reaching this conclusion, the ALJ has resolved all doubts against Staff. *Jones v. Dressel,* 623 P.2d at 373.

[72] Rule 6114(k)(II)(B), 4 CCR 723-6.

[73] *See* C.R.C.P. 56(c).

[74] Petition.

[75] In reaching this conclusion, this Decision does not make a determination as to moral character, as this is not required or necessary per § 40-10.1-110(3)(b), C.R.S., and Rule 6114(f)(III)(A) and (k), 4 CCR 723-6. What is more, the ALJ reaches the same result when treating the Petition as seeking a waiver of § 40-10.1-110(3)(b), C.R.S., and Rule 6114(f)(III)(A), 4 CCR 723-6. Even if mandatory disqualification by statute could be waived (and it cannot), the ALJ finds that it is against the public interest to do so in the circumstances here. Thus, to the extent necessary and in an abundance of caution, the ALJ denies Petitioner's waiver request.

these reasons, Staff's Motion for Summary Judgment is granted, the Petition is denied, and the February 6, 2025 hearing is vacated.

41. Because Staff's Motion for Summary Judgment is granted, Staff's Motion to Vacate is moot and is denied as such.

42. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this proceeding and recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. Consistent with the above discussion, Petitioner Danny Gene Goodall is disqualified from driving for Commission-regulated motor carriers identified in § 40-10.1-111(1), C.R.S., and the Petition in this Proceeding is denied.

2. The Motion for Summary Judgment filed January 8, 2025 is granted consistent with the above discussion.

3. The remote evidentiary hearing scheduled for February 6, 2025 is vacated.

4. The Motion to Vacate and Reschedule Hearing and Waive or Shorten Response Time filed January 30, 2025 is denied as moot.

5. Proceeding No. 24M-0451TR is closed.

6. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

7. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

8. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the

recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

9. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

10. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director